

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 \* \* \* \* \*

4 CHARLES AND BEVERLY PETERSON, )

5 Appellant, )

6 vs. )

7 BOARD OF TRUSTEES FOR SCHOOL )  
DISTRICT NO. 16/A, )

8 Respondents. )

OSPI 226-93

**DECISION AND ORDER**

9 \* \* \* \* \*

10 **PROCEDURAL HISTORY OF THIS APPEAL**

11 Charles and Beverly Peterson live in School District No. 57,  
12 Hill County. Their child is a student attending school in  
13 District 16/A, Hill County and riding the bus. The District 16/A  
14 Trustees denied the Petersons' request to change the bus route.  
15 The records filed with this office do not establish what  
16 procedure was followed to make the decision.

17 The Petersons appealed the Trustees' decision to the Hill  
18 County Transportation Committee [hereinafter "the Hill County  
19 Committee"]. The appeal was dismissed without hearing. A July  
20 30, 1993, Order stated in part:

21 This conclusion is based upon the fact that, while the  
22 child of this family has been granted permission to  
attend school in District 16/A under 20-5-302<sup>1</sup>, the

23  
24 <sup>1</sup> Section 20-5-302, MCA, was repealed as of July 1, 1993.  
25 All parties should note that the new tuition and transportation  
statutes may affect the issue raised below.

1 family resides in School District #57, and District  
2 16/A is not responsible for providing transportation.  
3 Therefore, Petitioner has not been denied any legal  
rights, duties or privileges because of the Board  
Decision.

4 Next, the Petersons appealed to this Superintendent, stating  
5 that the matter was dismissed without a hearing. This  
6 Superintendent reviewed the record below before setting a  
7 briefing schedule. No briefs were requested.

#### 8 STANDARD OF REVIEW

9 This is a review of a conclusion of law that an appeal  
10 should be dismissed. Conclusions of law are reviewed to  
11 determine if the interpretation of the law is correct. Steer,  
12 Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603  
13 (1990).

#### 14 DECISION AND ORDER

15 If a patron of a school district has a transportation  
16 controversy, he or she has a right to a hearing before a  
17 transportation committee. Section 20-10-132(1)(d), MCA. The  
18 Petersons asked District 16/A to change its bus route and the  
19 Trustees refused. The Petersons and the Trustees have a  
20 transportation controversy that Montana law requires  
21 transportation committees to hear. This matter is REMANDED to  
22 the Hill County Committee for a hearing.

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**MEMORANDUM OPINION**

A. Section 20-10-132, MCA, states in part:

(1) It shall be the duty of the county transportation committee to: . . .

(d) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

(2) After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

With § 20-10-132, MCA, the Legislature created a particular, statutory right for a "patron of the district" to have a transportation committee hearing "to establish the facts of transportation controversies." This Superintendent has upheld this hearing right before. See, for example, Teri Lynn Adams v. Musselshell County Transportation Committee, OSPI 172-89, decided October 24, 1989. 8 Ed. Law 137 (OSPI 1989).

While § 20-10-132, MCA, does not mean every transportation decision made by a board of trustees is a transportation controversy, it does require that every transportation controversy be reviewed in a hearing before a transportation committee if requested.

The Montana Legislature has decided that a district patron involved in a transportation controversy with trustees has a right to present evidence to a transportation committee. The committee must review the trustees' decision. In essence, the

1 Legislature is allowing a second look at all transportation  
2 controversies before the decision is final.

3       What is a "transportation controversy?"       This  
4 Superintendent defines it as a factual dispute related to a  
5 specific transportation benefit derived from a statutory or  
6 constitutional right. It is difficult to state an absolute rule  
7 but generally, if some students in a district benefit from a  
8 transportation decision, the transportation committee should hear  
9 arguments on why others should also benefit (or benefit instead).

10       For example, parents/patrons should be heard on the factual  
11 reasons why they believe trustees have erroneously denied  
12 transportation, established an unsatisfactory bus route,  
13 incorrectly determined the distance from school, incorrectly  
14 calculated reimbursement, etc. Given the language of § 20-10-  
15 132, MCA, one must conclude the Legislature has created a hearing  
16 right for these types of disputes.

17       What is not a "transportation controversy?" If there is no  
18 individual statutory transportation benefit or constitutional  
19 right at issue, there is no transportation controversy to be  
20 heard. A trustees' decision that is a discretionary, management  
21 decision applied equally to all district students is not a  
22 transportation controversy. An example is an interlocal  
23 transportation agreement with other districts. That is a  
24 district-wide management decision that is within their powers as  
25 the officials elected to operate the local schools.

1 B. A review of this appeal may be helpful to illustrate  
2 when a hearing must be held. The Hill County Committee refused  
3 to hear this appeal because, as a matter of law, a resident of  
4 District 57 is not an eligible transportee of District 16/A.  
5 That legal conclusion, while correct, does not resolve the  
6 transportation controversy raised -- bus routes.

7 The Petersons were not before the transportation committee  
8 asking that District 16/A provide transportation. At some prior  
9 time, these Districts either deliberately or inadvertently  
10 decided this student could attend school in District 16/A and  
11 ride the bus. When the appeal was filed with the Hill County  
12 Committee the Peterson student was attending school in District  
13 16/A and riding its bus on a route with which his parents were  
14 unhappy.

15 The Petersons are bus patrons with a transportation  
16 controversy -- they have a factual dispute related to a specific  
17 transportation benefit derived from a statutory or constitutional  
18 right. The transportation benefit at issue is bus routes and a  
19 particular bus route will operate to the benefit of some children  
20 more than others. This Superintendent realizes that bus routes  
21 will always be more convenient for some riders and less  
22 convenient for others but the Legislature has given bus patrons  
23 the right to be heard.

24 / /

1 This appeal was dismissed on the Hill County Committees' own  
2 motion. This Superintendent suggests that transportation  
3 committees not dismiss appeals on their own motions. If a school  
4 district wants to argue that the committee does not have  
5 jurisdiction because the issue raised is not a transportation  
6 controversy the district may move to dismiss. Also, this  
7 Superintendent suggests, based on the language of § 20-10-132  
8 (1)(d), MCA, that, when in doubt, a transportation committee  
9 should err on the side of granting a hearing. The statute does  
10 not mandate an elaborate, formalized proceeding. All that is  
11 required is a fair opportunity to be heard with an adequate  
12 record maintained.

13 C. This Order recognizes the procedural right to a hearing  
14 on transportation controversies. It does not reach the  
15 substantive issue of the bus route and should not be construed as  
16 finding merit in the Petersons' arguments.

17 Further, this Superintendent wrote in Althea Smith v. Board  
18 of Trustees, Judith Basin County School District No. 12, 11 Ed.  
19 Law 65 (OSPI 1992):

20 Unless a claimant has a case in controversy (contested  
21 case), the administrative process is not invoked and  
22 the county superintendent is without jurisdiction to  
23 hear the complaint and the complaint must be dismissed.  
24 To find that § 20-3-210, MCA, confers unlimited  
25 jurisdiction on a county superintendent leads to absurd  
results. I cannot believe that the legislature  
intended to subject every decision of a board of  
trustees to judicial review. If the county  
superintendent must hear an appeal on every decision of  
a board of trustees, this would be the result.

1 This remains the position of this Superintendent. The  
2 Legislature does not intend to subject every trustee decision to  
3 review in an administrative proceeding. Transportation  
4 controversies are specifically recognized in statute as  
5 reviewable but, elected trustees -- not transportation  
6 committees, the Superintendent of Public Instruction, or the  
7 courts -- control the operation of Montana's schools. Trustee  
8 transportation decisions should not be set aside lightly.

9 DATED this 19 day of November, 1993.

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11   
12 NANCY KEENAN

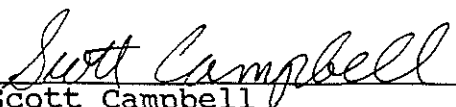
13 **CERTIFICATE OF SERVICE**

14 THIS IS TO CERTIFY that on this 19th day of November, 1993,  
15 a true and exact copy of the foregoing Decision and Order was  
mailed, postage prepaid, to the following:

16 Charles & Beverly Peterson  
17 Box 54, Simpson Route  
Havre, MT 59501

Shirley Isbell, Chairperson  
Hill County Trans. Committee  
315 4th Street  
Havre, MT 59501

18 Board of Trustees  
19 School District No. 16/A  
Box 7791  
20 Havre, MT 59501

21  
22   
23 Scott Campbell  
24 Paralegal Assistant  
25 Office of Public Instruction